DEPARTMENT OF INSURANCE.

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BURLINGTON INSURANCE CO. *v.* THRELKELD.[1] SUPREME COURT OF ARKANSAS. MAY 18, 1895.

Plaintiff, having taken a policy providing that the chattels insured should remain in the building where they were when the policy was issued, was permitted by the company's agent to remove the goods to another building, and the insurance was continued in the new place by a written clause attached to the policy by such agent. There was evidence that the agent was accustomed to grant such permissions, reporting the same in each case to the company, on blanks furnished by it for that purpose. *Held*, sufficient to show authority of the agent to grant such permission.

Where an insurance agent had authority to waive certain conditions in the policy, the exercise of such power, after his agency has been revoked, will bind the company, if the party dealing with him had no notice of the revocation.

THE AUTHORITY OF AN INSURANCE AGENT.

The business of insurance in its various forms and under various names is, at the present day, transacted, we might say, exclusively by corporations, the percentage of that done by co-operative or mutual companies being comparatively nominal. In the nature of things, therefore, it is patent at first blush that the transactions with these insurance corporations or companies, must be negotiated and perfected by agents of more or less extensive authority. A successful operation of the insurance business, necessarily requires that the company have its army of agents throughout the territory where its operations are carried on. Like officers of the army or navy, some of these agents outrank the others. Some are superior, some inferior. Some serve agents above them, others direct the service of those under them. Some are con-

[1] Reported in 31 S. W. 265.

stituted for the purpose of adjusting losses, or for superintending and establishing agencies, or they may be general agents having practically unlimited authority within the territory assigned them. Yet others are recording, canvassing, surveying and soliciting agents, the latter class usually working under a superior general agency. Inquiry will be directed chiefly to the live questions which arise in every day practice with reference to the authority of all these various grades of agencies, and the consequences of their acts, knowledge, etc., on the respective companies which they represent. The recording agent is usually furnished, by the company appointing him, with policies signed in blank by the chief officers of the company, blanks for various kinds of indorsements, blotters, advertising matter, etc. His real duty ordinarily is to write and countersign policies, make indorsements and sundry permits for additional insurance, change in the rate or hazard, etc., etc. His acts in this connection bind the company from the instant they are done as effectively as though done by the controlling officers of the corporation.

The soliciting, canvassing or surveying agent, is one sent out by the general agent to solicit insurance for the companies which he represents. His actual authority is usually to solicit and examine risks, report on the general status and desirability of any risk proposed, the moral and physical hazard connected therewith, and in general the desirable or unfavorable features of the offered risk. He is usually supplied with blotters advertising the merits of his company and similar advertising literature, but has no actual authority to sign policies, make indorsements permitting additional insurance, or greater hazard by reason of a change in the location of the property covered, or increase of risk from whatsoever source. He usually delivers the policy when it is sent him for delivery by his principal, collects and accounts to his principal for the premium, and is paid a commission for his services. His commission, in fact, is usually exactly the same as that received by local recording agents, and his duties, so far as appearances are concerned, are practically the same as those of the latter, except that the soliciting agent does not write any policies nor

make any indorsements thereon, this being done upon his advice and for him by the general agent who employs him. These two general kinds of agents will be distinguished as soliciting and recording agents. The recording agent, having power to bind his principal by an indorsement, he may, for his principal, waive any provision of the policy, or estop the company from relying on any provision which he could, as recording agent, alter or permit by an indorsement. He reports to his principal his acts done in his line of duty, and the company, upon this report, either ratifies or repudiates those acts. Of course this repudiation does not affect any one whose rights are at stake until notice of the repudiation by the principal is brought home to him. For instance, the recording agent might write a policy for an amount greater than his private instructions would warrant, but unless the assured had notice of this limitation, the company will be bound.

It is a general principle of agency that the acts and knowledge of the agent done and ascertained to be within the scope of the real or apparent authority of such agent will, in law, be held to be the acts and knowledge of the principal so far as the rights of third parties, who are ignorant of the restrictions of the authority of the agent, are concerned. Thus, an agent, having authority to make the usual indorsements and permits for the company, has authority to permit the removal of insured goods to another building, although the policy forbids such removal without permission indorsed, and the company will be bound by the consent of the agent, although the fact that the agent consented was never made known to the company or ratified by it: *Burlington Ins. Co.* v. *Threlkeld*, (Ark.), 31 S. W. 265. And the exercise of the authority of such agent will be binding even after that authority has been expressly taken away by the company, the assured having no knowledge of such revocation: *Id.* When an agent has mailed his usual report of his acts, the law will presume that it was received by the company in the absence of a showing to the contrary. Notice and proof of loss may be waived by parol, but this cannot be waived by a local recording agent of the company, as it is not within the real or apparent scope of

his agency: *Burlington Ins. Co.* v. *Kennerly*, (Ark.), 31 S. W. 155. The recording agent has authority to strike out certain provisions of a policy upon the same being objected to, and bind the company by the policy with such provisions stricken out: *Parsons* v. *Ins. Co.*, (Mo.), 31 S. W. 117. And where the policy provides that if the assured did not own the land upon which the insured building was situated, this fact must appear in writing on the policy, or it will be void, but the agent of the company who wrote the policy, having known all the facts and bound the company with such knowledge, it was held that the company was estopped from insisting on the forfeiture: *Id.* And this is the rule, though the policy stipulates that additional insurance or increase of hazard, or other change in the status of the insured property, be indorsed on the policy in writing: *Parsons* v. *Ins. Co.*, (Mo.), 31 S. W. 117. These provisions, being inserted in the policies for the benefit of the companies, they are not compelled to insist on them, but may waive them, and a recording agent with authority to make the necessary indorsement may waive the requirement with like force and to the same effect as could the company: *Burlington Ins. Co.* v. *Kennerly*, 31 S. W. 155. And the fact that the recording agent fails to transmit to his principal a copy of his indorsement on the policy permitting a removal of the property covered, additional insurance or other consent for a change of the status of things, and the company is thereby kept in ignorance of the acts of its agent, and though such conduct on the part of the agent be in direct disregard of the instructions of his principal, yet the assured cannot be thereby prejudiced in any of his rights under the policy, as the neglect of the agent is a failure to perform a duty he owed to his principal and not to the assured, and the company will be bound by such acts, and must suffer the consequences of the agent's neglect of duty and violation of instructions: *Glouster Mfg. Co.* v. *Ins. Co.*, 6 Gray, (Mass.), 497; *Potter* v. *Ins. Co.*, 63 Fed. 382. And a recording agent may waive a provision of a policy requiring the payment of the premium as a condition precedent to the taking effect of the insurance: *Ball & Sage Wagon Co.*, 20 Fed. 232. The acts of the agent

having authority to collect the premium binds the company in all he does in reference thereto, and where by its course of business the company makes it a custom to look to the agent for all premiums, whether collected by him or not, the policy-holders becoming liable to the agent therefor, this is tantamount to a payment by the assured, and the fact that such agent may neglect to collect or account for the premium will, in no way, invalidate the policy, even though it contain an express stipulation that it shall not be binding until the actual payment of the premium: *Elkins* v. *Ins. Co.*, 6 Atl. 224; *Lebanon Mut. Ins. Co.* v. *Humes*, 113 Pa. 591, 8 Atl. 163; *Alexander* v. *Ins. Co.*, 67 Wis. 422, 30 N. W. 727. And this is true, also, although the agent is guilty of violating his duty to collect and forward the premium by reason of his being merely a broker employed by the assured to obtain the insurance, and acts for the company only in delivering the policy and collecting the premium therefor: *Universal Fire Ins. Co.* v. *Black*, 109 Pa. 535, 1 Atl. 523. And where the broker or other collecting agent himself pays the premium on a policy sent him for collection and looks to the assured for the amount, the company will be bound by such payment, though the assured do not really pay the broker until after a loss, if at all: *Lebanon Mutual Ins. Co.* v. *Erb*, 112 Pa. 149, 4 Atl. 8; *Continental Life Ins. Co.* v. *Ashcraft*, 3 Atl. 774. In such cases, the agent to collect the insurance premium has satisfied himself as to its payment, and when he is satisfied about the payment of the premium, having been entrusted with a proper adjustment of the same, the company for which he acts is in no position to complain: *Scott* v. *Ins. Co.*, 53 Wis. 238, 10 N. W. 367; *Newark Machine Co.* v. *Ins. Co.*, 50 Ohio, 549, 35 N. E. 1060. On the same principle the agent to collect the premium may even grant a longer time within which it may be paid than he is expressly authorized to do: *Farnum* v. *Ins. Co.*, 83 Cal. 246, 23 Pac. 869.

A recording agent who has authority to countersign and issue policies has authority to bind his principal by an oral contract of insurance. So, where such an agent orally agrees with an applicant that the insurance shall take effect at once

or at some certain time, the policy to be issued and delivered as soon as practicable, such a contract will bind the company, which will be liable for a loss occurring after such an agreement and before the policy is reduced to writing and delivered: *The Relief Fire Ins. Co.* v. *Shaw*, 94 U. S. 574; *Davenport* v. *Ins. Co.*, 17 Iowa, 276; *Audubon* v. *Ins. Co.*, 27 N. Y. 216; *Commercial Mutual Marine Ins. Co.* v. *Union Mut. Ins. Co.*, 19 How. 318; *Angell* v. *Ins. Co.*, 59 N. Y. 171; *Fish* v. *Cottinet*, 44 N. Y. 538; *Hardwick* v. *State Ins. Co.*, 23 Or. 290, 31 Pac. 656; *Potter* v. *Ins. Co.*, 63 Fed. 382; *North British & Mercantile Ins. Co.* v. *Lambert*, (Or.), 37 Pac. 909; *King* v. *Heckla Ins. Co.*, 58 Wis. 508, 17 N. W. 297. And this is the case, although there be no definite agreement about the amount of premium or when it shall be paid: *Audubon* v. *Ins. Co.*, 27 N. Y. 216; *Harron* v. *Ins. Co.*, 88 Cal. 6, 25 Pac. 982. The agent can make a valid parol contract of insurance just as the company itself could: *Sanborn* v. *Ins. Co.*, 16 Gray, (Mass.), 448. And a stipulation in the policy to the effect that it will not be binding until countersigned by the agent will not effect the binding force of such oral contract: *Post* v. *Ins. Co.*, 43 Barb. 351. Nor need it be affirmatively shown that the agent had authority to bind his principal by a parol agreement: *Stickley* v. *Ins. Co.*, 37 S. C. 56, 16 S. E. 280. Likewise, where the agent agrees that the company shall be bound from the time the premium is paid, it will be liable for a loss before the policy is actually issued, but after the payment of the premium: *Knox* v. *Ins. Co.*, 50 Wis. 671, 7 N. W. 776; *Knox* v. *Ins. Co.*, 50 Wis. 680, 7 N. W. 780.

Policies of insurance usually contain a stipulation substantially as follows: "This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has, or shall hereafter make or procure, any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy." Frequently in litigation this and other named causes of forfeiture are set up by the companies in avoidance of an action on the policies. And, as a general rule, such stipulations are upheld

and a violation of the requirements are fatal. But, on the other hand, the fact that the agent issuing the policy may have been fully apprised of all the facts material to the risk in apt time, and that he issued the policy with full knowledge of the facts which otherwise would incur a forfeiture, is likewise often set up by the plaintiff to defeat the forfeiture. Then the question arises, what is the effect of such knowledge of the agent on the contract of insurance? The trend of the decisions is unquestionably to the effect that such knowledge of the agent, obtained in connection with the taking and negotiating for the insurance and by the insured in good faith conveyed to the agent, as such, will be held to be the knowledge of the company, and the company will not be permitted to claim a forfeiture of a policy on the ground of the existence of a fact which would avoid the policy, when, at the time of issuing the policy, the company, either directly or through its authorized agent, had knowledge of such fact. Nor can the force of this proposition be weakened by a stipulation in the policy to the effect that the agent taking the insurance shall be deemed the agent of the assured and not of the company: *St. Paul Fire & Marine Ins. Co.* v. *Parsons*, 47 Minn. 352, 50 N. W. 240; *Follette* v. *Ins. Co.*, 107 N. C. 240, 12 S. E. 370; *New Orleans Ins. Assn.* v. *Mathews*, 65 Miss. 312, 4 So. 62; *Ins. Co.* v. *Wilkinson*, 13 Wall. 222; *Travellers' Ins. Co.* v. *Harvey*, 82 Va. 949, 5 S. E. 553; *O'Brien* v. *Ins. Co.*, 52 Mich. 131, 17 N. W. 726; *Kahn* v. *Ins. Co.*, 34 Pac. 1059; *Eilenberger* v. *Ins. Co.*, 89 Pa. 464; *Wheaton* v. *Ins. Co.*, 76 Cal. 415, 18 Pac. 758; *Indiana Ins. Co.* v. *Capehart*, 108 Ind. 270, 8 N. E. 285; *Rowley* v. *Ins. Co.*, 36 N. Y. 550; *Kansal* v. *Ins. Co.*, 31 Minn. 17; *Ins. Co.* v. *Norton*, 96 U. S. 234; *Stone* v. *Ins. Co.*, 68 Iowa, 737, 28 N. W. 47; *Columbia Ins. Co.* v. *Cooper*, 50 Pa. 331; *Masters* v. *Ins. Co.*, 11 Barb. 624; *Peoria Fire & Marine Ins. Co.* v. *Hall*, 12 Mich. 202; *Meyers* v. *Ins. Co.*, 156 Pa. 420, 27 Atl. 39. In *Planters' Ins. Co.* v. *Meyers*, 55 Miss. 479, 499, the policy sued on contained this provision: "It is a part of this contract that any person, other than the assured, who may have procured this insurance to be taken by the company, shall be deemed to be the agent of the

assured . . . and not of this company under any circumstances whatever, in any transaction relating to this insurance." The court in a very able and convincing opinion held that such a stipulation could not change the real status of the agency, and that the acts and knowledge of the agent were nevertheless chargeable to the company. Passing upon a similar provision in a policy, the Supreme Court of Arkansas says: "The fault rests with the solicitor; to whom shall it be imputed? He acted on behalf of the company and it accepted the fruits of his work; but it is said that he was a 'solicitor' and not an 'agent' of the company, and that the applicaton recited that in writing out answers to questions in it and preparing a diagram, he acted as the agent of the insured. For convenience in the conduct of its business the company may make the above classification of its agencies, but it cannot disown any one by classifying them. Neither can its declaration override the facts, nor a fiction dissolve existing relations;" *Sprott* v. *Ins. Assn.*, 53 Ark. 216, 222, 13 S. W. 799. Again, it was held in *Home Ins. Co.* v. *Gibson*, (Miss.), 17 So. 13, that a stipulation in a policy as follows: "No officer, agent or other representative of this company shall have power to waive any provision or condition of this policy except such as by its terms may be the subject of agreement endorsed hereon or added hereto," will not preclude the company from estopping itself by the acts or knowledge of its agent. The court quoted with approval the following language of the Supreme Court of Michigan in the case of *Ins. Co.* v. *Earle*, 33 Mich. 143: "There can be no more force in an agreement in writing not to agree by parol, than in a parol agreement not to agree in writing. Every such agreement is ended by the new one which contradicts it." This language also received approving sanction in *Morrison* v. *Ins. Co.*, 69 Tex. 353, 6 S. W. 605; *Lamberton* v. *Ins. Co.*, 39 Minn. 129, 39 N. W. 76; *Kahn* v. *Ins. Co.*, 34 Pac. 1059, and other cases. To same effect see *Mut. Benefit Life Ins. Co.* v. *Robinson*, 58 Fed. 723; *Mix* v. *Ins. Co.*, 32 Atl. 460. An apparently contrary doctrine seems to prevail in Vermont: *Smith* v. *Ins. Co.*, 60 Vt. 682, 15 Atl. 353. But the reasoning of the case is well met by that of

Lamberton v. *Ins. Co.*, *supra*, wherein the court says: "The restriction here is so broad that it applies alike to every officer, agent or representative of this company, and, as a corporation can only act through such agencies, the substance of the provision under consideration is that the company shall not be held to have waived any of the terms or conditions of the policy. That is to say, in other words, that one of the parties to a written contract, which is not required by law to be in writing, cannot, subsequent to the making of the contract, waive, by parol agreement, provisions which had been incorporated in the contract for his benefit. A contracting party cannot so tie his own hands, so restrict his own legal capacity for future action, that he has not the power, even with the assent of the other party, to bind or obligate himself by his further action or agreement contrary to the terms of the written contract." This is self-evident. The clause of this policy relied upon as expressly restricting the power of the agent whose conduct is here in question, is of that character. If it is effectual at all, as a limitation on the power of future action, it limits the power of every agent, officer and representative of the company, and hence, practically, that of the corporation. It is no more applicable to this particular agent than to all of those to whom the conduct of affairs of the corporation is committed. In that broad scope, and as applicable to all the representatives of the corporation, it cannot be enforced so as to render inoperative such subsequent action or agreement of corporate agents as would, if it were not for this clause in the contract, be deemed the effectual action or agreement of the corporation.

This reasoning is unquestionably forcible. Suppose an insurance corporation, by resolution or other proper action of its board of directors, should delegate to a certain person the general and exclusive control and management of its business. Such person could of course bind his principal in all matters pertaining to contracts of insurance with his company. But suppose that this person should have inserted in all policies of his company a clause similar to the one considered by the Minnesota court. Suppose a loss occurs. A controversy

arises over the amount due or over other matters. The policy may limit the time within which an action thereon may be brought to six months. The general manager may inveigle the assued into deferring a suit by promises and assurances that the claim will be settled without a resort to the courts. The assured knows that the manager has general authority, imposes confidence in his assurances and suggestions, and negotiations for a settlement pends until it is too late to bring the action. Is there a court of last resort in the land that would not hold the company, by the acts of its general agent and manager, estopped from taking advantage of the six months limitation provided in the policy, or, for like reasons, any other conditions imposing a forfeiture where the assured is in no sense at fault, and the agent dealing with him wholly so?

In harmony with this contention, it is held that where the agent writing the policy at the time of negotiating for the insurance has knowledge of other insurance which, according to the stipulations of the policy, would render it void, and nevertheless accepts the risk, writes and delivers the policy and collects and retains the premium with such knowledge, this knowledge will be chargeable to the company, and it cannot take advantage of the clause in the policy forbidding the other insurance: *Collins* v. *Ins. Co.*, 79 N. C. 279; *Haruthal* v. *Ins. Co.*, 88 N. C. 71; *Union Ins. Co.* v. *Murphy*, 4 Atl. 352; *Palmer* v. *Ins. Co.*, 44 Wis. 201; *Miller* v. *Ins. Co.*, 70 Iowa, 704, 29 N. W. 411; *Kahn* v. *Ins. Co.*, (Wyo.), 34 Pac. 1059; *Carrugi* v. *Ins. Co.*, 40 Ga. 140; *Hammond* v. *Ins. Co.*, 62 N. W. 883, reversing 60 N. W. 1095; *Russell* v. *Ins. Co.*, 55 Mo. 585; *Pitney* v. *Glenn's Falls Ins. Co.*, 65 N. Y. 6; *Anderson* v. *Ins. Co.*, 63 N. W. 241; *Pechiner* v. *Ins. Co.*, 65 N. Y. 195; *Ins. Co.* v. *Earle*, 33 Mich. 143; *Beebe* v. *Ins. Co.*, 93 Mich. 514, 53 N. W. 818; *Rockford Ins. Co.* v. *Farmer's State Bank*, 50 Kan. 427, 31 Pac. 1063; *Shafer* v. *Ins. Co.*, 53 Wis. 361, 10 N. W. 381; *Capitol Ins. Co.* v. *Bank of Pleasanton*, 50 Kan. 449, 31 Pac. 1069; *Fire Assn.* v. *Laning*, (Tex. Civ. App.), 31 S.W. 681; *Sprott* v. *Ins. Co.*, 53 Ark. 215, 13 S.W.

799; *Crescent Ins. Co.* v. *Camp*, 71 Tex. 505, 9 S. W. 473; *Harriman* v. *Ins. Co.*, 49 Wis. 71, 5 N. W. 12; *Eagle Fire Ins. Co.* v. *Globe Loan & Trust Co.*, 62 N. W. 895; *Gans* v. *Ins. Co.*, 43 Wis. 108; *Mutual Reserve Fund Life Assn.* v. *Sullivan*, (Tex. Civ. App.), 29 S. W. 190; *Burson* v. *Fire Assn.*, 136 Pa. 267, 20 Atl. 401; *Haire* v. *Ins. Co.*, 93 Mich. 481, 53 N. W. 623; *Liverpool, London & Globe Ins. Co.* v. *Sheffy*, 71 Miss. 922, 16 So. 307; *Home Ins. Co.* v. *Gibson*, (Miss.), 17 So. 13; *Dwelling House Ins. Co.* v. *Brodie*, 52 Ark. 11, 11 S. W. 1016. This is the rule, too, though the application for the insurance expressly stipulate that "the applicant hereby declares and warrants that the above answers are true and no statement contradictory to the above was made to or by the agent of the company, and he agrees that this declaration should be the basis of and form part of the contract or policy between the assured and the company:" *Robinson* v. *Ins. Co.*, 93 Mich. 553, 53 N. W. 821; *Beebe* v. *Ins. Co.*, *supra*. The law makes it the duty of the agent to disclose to his principal all facts of which he may have knowledge and which affect the risk, and if he fail to do so, the company—not the assured—must abide the consequences: *Harriman* v. *Ins. Co.*, 49 Wis. 71, 5 N. W. 12; *Hamilton* v. *Ins. Co.*, 15 Mo. App. 59.

Where the company is advised of the additional insurance, either by reason of its own knowledge of the facts, or through the knowledge of its agent, chargeable to it, it must, either itself, or through its agent object to such other insurance and cancel the policy and return the assured his proper proportion of the premium. Failing to do which, the company will be estopped from setting up a forfeiture: 40 Mo. 557. "The object of requiring leave to take insurance in another company to be indorsed on a policy is to give notice of the additional policy, and where the same agent represents both companies and recommended and issued the additional policy, the original company cannot set up such failure of indorsement as a defense to a suit on its policy:" *Russell* v. *Ins. Co.*, 55 Mo. 585. And parol evidence is admissible to prove a waiver of such condition, though the policy require the permission to be in

writing: *Pechner* v. *Ins. Co.*, 65 N. Y. 195; *Wilkinson* v. *Ins. Co.*, 13 Wall. 222; *American Central Ins. Co.* v. *McCrea, Mary & Co.*, 8 Lea, (Tenn.), 513, 523. If there be a controversy as to whether the agent waived the notice or not, or whether he had knowledge of facts which would imply a waiver, the matter on this issue would resolve itself into a question of fact for a jury to determine: *Pitney* v. *Glenn's Falls Ins. Co.*, 65 N. Y. 6.

The general rule is, also, that a company will be liable for the fraud or mistakes of its agents, and where an agent issued a policy for three years by mistake when it was only intended that it should remain in force one year, which was delivered to the assured as written, and he accepted it in good faith, not knowing that the agent had made a mistake, and was not apprised of such mistake until after a loss, it was held that the company was liable for the loss suffered within the three years, though after one year: *Dwelling House Ins. Co.*, 153 Pa. 324, 25 Atl. 757. And where an insurance company has knowledge of the true title of the assured, but its agent through mistake writes the policy for the full value of the fee in the land, instead of the actual interest of the assured, which was correctly stated in the application to be only a life estate, the company will be liable on the policy as written, and will not be permitted to set up the mistake of its agent to defeat a recovery: *Michigan Mut. Life Ins. Co.* v. *Leon*, (Ind. Sup.), 37 N. E. 584; *Welsh* v. *London Assur. Corp.*, 151 Pa. 607, 25 Atl. 142; *Creed* v. *Sun Fire Office*, (Ala.), 14 So. 323; *Dailey* v. *Pref. Mut. Acc. Assn.*, (Mich.), 57 N. W. 184; See, also, *Manhattan Ins. Co.* v. *Webster*, 59 Pa. 227; *Bourgeois* v. *Ins. Co.*, 86 Wis. 402, 57 N. W. 38. So, where an agent issues a policy, knowing of incumbrances or liens on the property in violation of the provisions of the policy, such incumbrances cannot be set up as a defense to an action on the policy: *Shefer* v. *Phœnix Ins. Co.*, 58 Wis. 351, 10 N. W. 381; *Harriman* v. *Ins. Co.*, 49 Wis. 71, 5 N. W. 12; *Harrington* v. *Ins. Co.*, 66 Hun, 628, 21 N. Y. 31; *West Coast Lumber Co.* v. *Ins. Co.*, 98 Cal. 502, 33 Pac. 258; *Equitable Fire Ins. Co.* v. *Alexander*, (Miss.), 12 So. 25; *Hartford Fire*

Ins. Co. v. *Haas*, 87 Ky. 531, 9 S. W. 720; *Home Ins. Co.* v. *Gibson*, 17 So. 13. On the same principle a warranty in a policy requiring a clear space to be maintained between the property insured and other property will be regarded in law as waived where the agent who writes and delivers the policy is cognizant, at the time, of the want of such space (*Liverpool, London & Globe Ins. Co.* v. *Lumber Co.*, (Miss.), 17 So. 445), and the *onus* is on the insurer to establish a breach of the warranty: *Id.* An agent having authority to countersign and deliver policies, has also authority to waive a requirement of the policy that the assured shall keep his books and inventories in a fireproof safe: *Niagara Fire Ins. Co.* v. *Brown*, 123 Ill. 356, 15 N. E. 166. And if the property be vacant, at the time of writing the insurance, to the knowledge of the agent, it will be binding: *Rochester Loan & Banking Co.* v. *Ins. Co.*, 62 N. W. 877.

There are a few cases which hold that where the policy of insurance itself limits the powers and authority of the agent issuing the policy to certain definite and specified acts, and expressly repudiates his authority as to all other acts, that this is notice to the assured accepting the policy of the limitations placed on the authority of the agent, and the assured will not be protected in relying on any oral waiver or assurances of the agent in any other matters pertaining to the insurance contract or matters that may affect it either presently or subsequently, which are not embodied in the express authority conferred, or which are forbidden by that expressly withheld: *Cleaver* v. *Traders' Ins. Co.*, 65 Mich. 527, 32 N. W. 660; *Hankins* v. *Ins. Co.*, 70 Wis. 1, 35 N. W. 34; *O'Reiley* v. *London Assur. Corp.* 101 N. Y. 575, 5 N. E. 568; *Kyte* v. *Com. Union Assur. Co.*, 144 Mass. 43, 10 N. E. 518; *Enos* v. *Ins. Co.*, 67 Cal. 621, 8 Pac. 379. It is otherwise, however, where there is no express stipulation in the policy that the agent may not waive any of its conditions: *Silverberg* v. *Ins. Co.*, 67 Cal. 36, 7 Pac. 38; *Schoener* v. *Ins. Co.*, 50 Wis. 575, 7 N. W. 544; *Alexander* v. *Ins. Co.*, 67 Wis. 422, 30 N. W. 727; *O'Brien* v. *Ins. Co.*, 22 Fed. 586; *Cohen* v. *Ins. Co.*, 67 Texas, 325, 3 S. W. 296; *Ball and Sage Wagon Co.* v. *Ins.*

Co., 20 Fed. 232. But certainly none of these cases could be construed as holding that an insurance company can completely shear its agent of authority and at the same time accept his services as agent, and the results of the duties necessarily incumbent on him as such. If they do, it suffices to say that they are in the very teeth of the great weight of modern authority, contrary to reason, and not sustained by principle: *Beebe* v. *Ins. Co.*, 93 Mich. 514, 53 N. W. 818; *Ins. Co.* v. *Earle*, 33 Mich. 143; *Rockford Ins. Co.* v. *Farmers' State Bank*, 50 Kan. 427, 31 Pac. 1063; *Shafer* v. *Ins. Co.*, 53 Wis. 361, 10 N. W. 381; *Capitol Ins. Co.* v. *Bank of Pleasanton*, 50 Kan. 449, 31 Pac. 1069; *Kahn* v. *Ins. Co.*, (Wyo.), 34 Pac. 1059; *Dwelling House Ins. Co.* v. *Brodie*, 52 Ark. 11, 11 S. W. 1016, and authorities cited. But a local recording agent has no authority to receive notice of loss: *Edwards* v. *Ins. Co.*, 75 Pa. 378, nor can he waive proofs of loss required by the policy. This is not within his real or apparent authority. His province is to pass upon the risk, write the policy, collect the premium, etc. But after a loss, there is nothing for the local agent to do. He is not authorized to pay or adjust the loss in any sense, and has nothing to do with that which is required by the assured to be done after the loss in order to effect a recovery or payment of the amount called for by the policy: *Harrison* v. *Ins. Co.*, 59 Fed. 732; *Von Genechtin* v. *Ins. Co.*, 75 Iowa, 544, 39 N. W. 881. Perhaps one of the most fruitful sources of litigation and contention in the settlement of losses is where the application for insurance states matters which, if true, and properly authorized, would cause a forfeiture of all rights under the policy. These applications, too, are usually filled by the agents of the companies who solicit risks and work up the business in their locality for their principals. The courts generally hold that where the agent of the company takes the application, fills out the answers to the questions therein propounded to the applicant, and does so by writing incorrect answers or stating facts therein not authorized by the applicant, and procures the signature of the applicant thereto after having written out the answers, he having made correct answers in good faith to all

the interrogatories, and such agent sends the application so filled out to the company which issues a policy thereon, delivers same and receives the premium therefor, the policy will not be invalidated by reason of any falsity of any of the answers contained in the application and made so by the agent taking the same, but the company will be chargeable with the knowledge of its agent received in connection with the preparation of the application, and will be estopped from setting up a forfeiture by reason of any such false statements: *Corbitt* v. *Ins. Co.*, 30 N. Y. 1069; *Providence Life Assurance Soc.*, 58 Ark. 528, 25 S. W. 835; *Continental Ins. Co.* v. *Pierce*, 39 Kan. 396, 18 Pac. 291; *Dwelling House Ins. Co.* v. *Brodie*, 52 Ark. 11, 11 S. W. 1016; *Purditzky* v. *Ins. Co.*, 72 Wis. 492, 40 N. W. 386; *McArthur* v. *Home Life Assn.*, 73 Iowa 336, 35 N. W. 430; *Temmik* v. *Metropolitan Life Ins. Co.*, 72 Mich. 388, 40 N. W. 469; *Commercial Union Assur. Co.* v. *Elliott*, 13 Atl. 970; *Union Mut. Life Ins. Co.* v. *Wilkinson*, 13 Wall. 222; *Sullivan* v. *Ins. Co.*, 34 Kan. 170, 8 Pac. 112; *State Ins. Co.* v. *Jordan*, 29 Neb. 514, 45 N. W. 792; *Home Fire Ins. Co.* v. *Fallon*, (Neb.), 63 N. W. 860; *Kansel* v. *Ins. Co.*, 31 Minn. 17, 16 N. W. 430; *Deitz* v. *Ins. Co.*, 31 W. Va. 851, 8 S. E. 616; *American Life Ins. Co.* v. *Mahone*, 21 Wall. 152; *N. J. Mutual Life Ins. Co.* v. *Baker*, 94 U. S. 610; *Woodbury Savings Bank and Bldg. & Loan Assn.*, 31 Conn. 517; *Beebe* v. *Ins. Co.*, 25 Conn. 51; *Columbia Ins. Co.* v. *Cooper*, 50 Pa. 331; *Rowley* v. *Ins. Co.*, 36 N. Y. 550; *Eilenberger* v. *Ins. Co.*, 89 Pa. 464; *Rockford Ins. Co.* v. *Nelson*, 65 Ill. 415; *Hingston* v. *Ins. Co.*, 42 Iowa 46; *Planters' Ins. Co.* v. *Meyers*, 55 Miss. 479; *Stone* v. *Hawkeye Ins. Co.*, 68 Iowa, 737, 28 N. W. 47; *Phœnix Ins. Co.* v. *Allen*, 109 Ind. 273, 10 N. E. 85; *Bradnup* v. *Ins. Co.*, 27 Minn. 393, 7 N. W. 735; *Equitable Life Assurance Soc.* v. *Hazelwood*, 75 Tex. 348, 12 S. W. 621; *Syndicate Ins. Co.* v. *Catchings*, (Ala.), 16 So. 46; *O'Rourke* v. *Ins. Co.*, 30 N. Y. 215; *Bernard* v. *United Life Ins. Assn.*, 33 N. Y. 22; *Mullin* v. *Ins. Co.*, 58 Vt. 113, 4 Atl. 817; *Germania Fire Ins. Co.* v. *Hick*, 125 Ill. 361, 17 N. E. 792; *Sprott* v. *N. O. Ins. Assn.*, 53 Ark. 215, 13 S. W. 799; *Eggleston* v. *Ins. Co.*,

65 Iowa, 308, 21 N. W. 652; *Wheaton* v. *Ins. Co.*, 76 Cal. 415, 18 Pac. 758; *Sawyer Equitable Acc. Ins. Co.*, 42 Fed. 30; *Pacific Mut. Life Ins. Co.* v. *Snowden*, 58 Fed. 342; *Hingston* v. *Ins. Co.*, 42 Iowa, 46. And the rule is the same whether the applicant can read and write or not: *Home Fire Ins. Co.* v. *Fallon*, *supra*. And such filling out of the application is within the scope of the authority of a soliciting agent: *Rowley* v. *Ins. Co.*, 36 N. Y. 550; *McArthur* v. *Ins. Co.*, 73 Iowa, 336, 35 N. W. 430; *Prov. Life Assur. Soc.* v. *Reutlinger*, 58 Ark. 528, 25 S. W. 835; *Union Mut. Ins. Co.* v. *Wilkinson*, 13 Wall. 222. Where an insurance company furnishes its agent with blank applications for insurance, the law presumes that such agent has authority from his principal to use them: *Donnelly* v. *Cedar Rapids Ins. Co.*, 70 Iowa, 693, 28 N. W. 607.

It has been held in some cases that a soliciting agent, who has only authority to solicit applications for insurance, to forward them to the company for its acceptance, to fix rates of insurance and report on the risk in general, to deliver the policy when issued by the company or its general agents, and to collect and account to them for the premium on the same, but who has not authority to issue and countersign policies or write indorsements thereon, has no actual or implied authority to vary the terms of the policy, to waive any of its provisions, or, by his knowledge or conduct, to estop the company from setting up any forfeiture by reason of a violation of any of the terms of the policy: *Liverpool, London & Globe Ins. Co.* v. *Shuster*, 63 Miss. 431; *Putnam Tool Co.* v. *Ins. Co.*, 145 Mass. 265, 13 N. E. 902; *Liverpool, London & Globe Ins. Co.* v. *Sorsby*, 60 Miss. 202; *American Ins. Co.* v. *Hampton*, 54 Ark. 75, 14 S. W. 1092; *Armstrong* v. *State Ins. Co.*, 61 Iowa, 212, 16 N. W. 94; *Critchett* v. *Ins. Co.*, 53 Iowa, 404, 5 N. W. 543; *Strickland* v. *Ins. Co.*, 66 Iowa, 466, 23 N. W. 926; *Russell* v. *Cedar Rapids Ins. Co.*, 78 Iowa, 216, 42 N. W. 654; *Smith* v. *Ins. Co.*, 6 Dak. 433, 43 N. W. 810. And the fact that the company may furnish such agent with printed advertising matter such as calendars, blotters, etc., advertising the agency of such solicitor, will not make him

any other than a soliciting agent, or, in any sense, enlarge the powers conferred upon him: *Putnam Tool Co.* v. *Ins. Co.*, *supra*; *Armstrong* v. *Ins. Co.*, *supra*. But by far the better reason and the unquestioned weight of authority is to the effect that the soliciting agent may waive provisions of the policy. The theory of one class of cases is that, as he has no authority to sign a policy or make a contract of insurance, he cannot waive that which he would not be authorized to effect as a valid contract. The reasoning of the other cases is that he is selected by the company, is not selected by the assured, does not act for the assured; all transactions whatever in regard to the insurance are carried on through him; he goes upon the ground at the request of his principal; examines risks; makes rates; prepares diagrams of the property showing the exposures; reports on the physical, moral, and general hazard of the risk; takes the application for insurance; usually fills it up and explains its effect and nature to the uninitiated insured; forwards the application to his principal, whether the latter be a general agent with control of a certain territory or the company itself, who sends the policy to the solicitor for delivery as requested, relying in large part and perhaps entirely, in passing on the risk, upon whether the report of the soliciting agent is favorable or unfavorable. The solicitor collects the premium when delivering the policy, and thus the contract of insurance is consummated, and the assured, usually unacquainted with the technical distinctions and hair-splitting legal differences between a soliciting and a recording agent, has effected his insurance with the solicitor whom he regards as in every sense the agent of the company, and whose acts and doings the company accepts and profits by. The acts and knowledge of such soliciting agent done and received in connection with the negotiations and perfection of the insurance contract, are, in law, the acts and knowledge of the principal who sent the agent out with instructions to get insurance business, and who is stimulated to diligent efforts not only by being urged to this effect, but by the promise and assurance of a liberal commission on all the insurance he can control. So, where an application is

made to the soliciting agent for certain insurance, and he is advised that the applicant intends to obtain additional insurance on the same property, this is, in effect, an application for a policy, which would permit such other insurance, and, if the agent fails to have such a policy issued, the company will not be permitted to take advantage of any want of mention in the policy of the additional insurance: *Brandon* v. *Ins. Co.*, 27 Minn. 393, 7 N. W. 735; *Wood, Ins.*, Sec. 386. And, though such soliciting agent never notifies his company of the existing or contemplated additional insurance, the rule is the same: *McEwen* v. *Ins. Co.*, 5 Hill, 101. This, also, although the policy, by its very terms, requires that additional insurance shall be indorsed on the same in writing, or it will be void: *Id.* To same effect, see *Kitchen* v. *Ins. Co.*, 57 Mich. 135, 23 N. W. 616; *Phœnix Ins. Co.* v. *Spiers*, 87 Ky. 285, 8 S. W. 453; *Wilkinson* v. *Ins. Co.*, 13 Wall. 222. This rule is well expressed in forcible language by the Supreme Court of Illinois in the case of *American Ins. Co.* v. *Luttrell*, 89 Ill. 314, as follows: "The assured fully disclosed to the agent of the appellant at the time of making the application that he held this insurance policy in the Phœnix Company. He concealed nothing from the appellant or his agent. Appellant, with full knowledge of these facts, accepted the application in the condition in which it was, and issued the policy upon it and accepted the premium which was paid upon it. To hold this policy void under such circumstances would be simply allowing the insurance company to practice an unblushing fraud upon the insured. It was well known to the company when they accepted the premium upon this policy, and issued it as a valid policy to appellee, that there was additional insurance upon the property as it is now. Having thus declared it valid to the assured, the assured having paid his premium upon the faith of that declaration by the company, the company cannot now be permitted to say that it is invalid upon that ground." And the Minnesota court in *Kansal* v. *Ins. Co.*, 31 Minn. 17, 20, thus states the doctrine: "On principle, as well as for considerations of public policy, agents of insurance companies, authorized to procure applications

for insurance and to forward them to the companies for acceptance, must be deemed the agents of the insurers, and not of the insured, in all that they do in preparing the application or in any representation they may make to the insured as to the character or effect of the statements therein contained. This rule is rendered necessary by the manner in which business is now usually done by the insurers. They supply these agents with printed blanks, stimulate them by the promise of liberal commissions, and then send them abroad in the community to solicit insurance. The companies employ them for that purpose, and the public regard them as the agents of the companies in the matter of preparing the applications, a fact which the companies perfectly understand. The parties who are induced by these agents to make applications for insurance rarely know anything about the general officers of the company, but look to the agent as the full and complete representative in all that is said or done in regard to the application. And in view of the apparent authority with which the companies clothe these solicitors, they have a perfect right to consider them such." To like effect, see *Malleable Iron Works* v. *Ins. Co.*, 25 Conn. 465; *Hamilton* v. *Ins. Co.*, 94 Mo. 353, 7 S. W. 261; *Fish* v. *Cottenet*, 44 N. Y. 538; *Woodbury Savings Bank* v. *Ins. Co.*, 31 Conn. 517; *Miller* v. *Ins. Co.*, 31 Iowa, 216; *American Fire Ins. Co.* v. *Luttrell*, 89 Ill. 314; *Hough* v. *Ins. Co.*, 29 Conn. 10; *Sexton* v. *Ins. Co.*, 9 Barb. 191; *Jordan* v. *Ins. Co.*, 64 Iowa, 216, 19 N. W. 919; *Boetcher* v. *Ins. Co.*, 47 Iowa, 253; *Hardin* v. *Ins. Co.*, 90 Va. 413, 18 S. E. 911; *Forward* v. *Ins. Co.*, 142 N. Y. 382, 37 N. E. 615; *Ellis* v. *Ins. Co.*, 50 N. Y. 402; *Masters* v. *Ins. Co.*, 11 Barb. 624; *Wilkinson* v. *Ins. Co.*, 13 Wall. 222; *Fullette* v. *U. S. Mut. Acc. Assn.*, 110 N. C. 377, 14 S. E. 923; *Continental Ins. Co.* v. *Ruckman*, 127 Ill. 364, 20 N. E. 77; *Bergeron* v. *Ins. Co.*, 111 N. C. 45, 15 S. E. 883. In the latter case the North Carolina Court thus lays down the rule: "The principle has been more than once announced by this court that, where a soliciting agent is informed before the policy is issued of a fact which, if fraudulently concealed by the applicant would constitute a ground of forfeiture under one of its con-

ditions, and afterwards receives the premium and delivers the policy, his knowledge is imputed to his principal, and whether he actually communicates the fact to the principal office of the company or not, the condition is deemed to have been waived. These rulings rest upon the principle that to permit the insurer to gather into its coffers premiums collected by one of its local agents, and continue to recognize the validity of the contract made through him until it becomes apparent that a loss has occurred, and then, for the first time, to repudiate the agency, would be to lend the sanction of the law to a palpable fraud." It is further held that the acts and knowledge of a clerk done and received while soliciting insurance for his principal, who is a recording agent, is chargeable to the recording agent, and, through him, to the company itself, and it will be bound accordingly: *Bennett* v. *Ins. Co.*, 70 Iowa, 600, 31 N. W. 948; *McGonigle* v. *Ins. Co.*, 31 Atl. 868; *Phœnix Ins. Co.* v. *Ward*, (Tex. Civ. App.), 26 S. W. 763; *Arff* v. *Ins. Co.*, 125 N. Y. 57, 25 N. E. 1073; *Bergeron* v. *Ins. Co.*, 111 N. C. 45, 15 S. E. 383; *Continental Ins. Co.* v. *Ruckman*, 127 Ill. 364, 20 N. E. 77. Of course such clerks are practically soliciting agents. If there is any difference, they have not as much authority as a soliciting agent. Again, too, on the same principle the courts hold the acts and knowledge of a medical examiner of a life company, in connection with the proposed risk, to be that of the company, and chargeable to it. And when the assued states facts in good faith to the medical examiner who writes down the answer as he contends it should be written, or fails to write it all, deeming it unnecessary, or makes use of technical expressions which do not convey the correct answer of the assured, or, in short, in any way misleads the applicant to his prejudice in filling up the application or directing the way to answer a question, all such acts are the acts of the company through its medical examiner whom it has appointed for the purpose of taking the application, and, through such examiner, are chargeable to the company and it will be estopped from insisting on a forfeiture by reason of any untrue statement caused by the suggestion of such examiner, or any omission of duty of such examiner to make known to

the company the full purport of the examination and answers, and this though the policy itself makes the answers warranties and their falsity a breach of the contract and forfeiture. *Mutual Benefit Life Ins. Co.* v. *Robinson*, 58 Fed. 723; *Providence Life Assur. Soc.* v. *Reutlinger*, 58 Ark. 528, 25 S. W. 835; *Purditzky* v. *Ins. Co.*, 76 Mich. 428, 43 N. W. 373; *McArthur* v. *Home Life Ins. Co.*, 73 Iowa, 336, 35 N. W. 430; *Equitable Life Assur. Soc.* v. *Hazlewood*, 73 Tex. 384, 12 S. W. 621. Now it is patent that a medical examiner, like a "solicitor," has no actual or implied authority to make an insurance contract and bind his principal thereby. But he is designated by the company for the purpose of examining the applicant for insurance from a medical and scientific standpoint, and is selected by the company for his supposed fitness for this purpose. The company pays him for his services, and relies on his integrity and ability in his special calling for the necessary information to ascertain whether or not the proposed risk is desirable or not. Such an examiner certainly can have no more, if, indeed, as much, authority to represent his principal as does the soliciting agent of the very same company, perhaps, who is appointed by the company itself or its general agents for the purpose of soliciting risks, taking applications therefor, delivering the policies, and collecting the premium. Both are selected by their principals and not by the applicant for insurance; both are accountable to their companies and not to the assured; both are paid by their employers and not by those from whom they solicit insurance, and, within the legitimate sphere of their action, both bind their principals by their acts and knowledge in connection with the negotiation for the insurance, and, of course, when the company is advised, either directly or through its agents, of facts which would defeat the policy, and, with such knowledge, still issues the policy and takes the premium therefor, it will not be permitted to set up a forfeiture by reason of such defect. Practically all the cases are to this effect, and even if none were, the principle of common sense, natural right, and natural justice would forbid the companies from taking an unconscionable advantage of the assured by their own studied wrong to his great injury,

and would override every contention to the contrary. But it should be borne in mind that the authority of a soliciting agent to bind his company by his acts, declarations, and knowledge, does not exist after the policy is delivered and the premium collected. After that, the solicitor's agency is at an end and no notice to him will effect or bind the company in any way: *Hamilton* v. *Ins. Co.*, 15 Mo. App. 59; *Snedicor* v. *Ins. Co.* (Mich.), 64 N. W. 35. And the same doctrine applies to brokers who are simply employed to deliver the policy, collect the premium, etc.: *Mellon* v. *Ins. Co.*, 17 N. Y. 609. But it is the duty of such solicitors and brokers to reveal to their principals all information they may obtain affecting the risk in connection with any or all of the duties they perform in taking the application, delivering the policy, and collecting the premium, and the applicant has a right to rely on the assurance the law justifies that these agents will so discharge their duty to their principals: *Whitney* v. *National Masonic Acc. Assn.* (Minn.), 57 N. W. 943; *Hamilton* v. *Ins. Co.*, 15 Mo. App. 59. And a provision in the policy making the agent soliciting the insurance the agent of the applicant will have no force: *Meyers* v. *Ins. Co.*, 156 Pa. 420, 27 Atl. 39; *Kahn* v. *Ins. Co.*, (Wyo.), 34 Pac. 1059. The authority of the agent is not limited by the written or oral appointment by the principal, but is coextensive with the apparent authority which induces, in the ordinary transactions of business, a belief that the agent possesses that authority which would prompt a reasonable person to believe that it existed to the full extent warranted from the holding out of the agent to the world by the company: *Farmers & Merchants Ins. Co.* v. *Chestnut*, 50 Ill. 111; *Keeler* v. *Ins. Co.*, 16 Wis. 523; *Kenton* v. *Ins. Co.*, 6 Bush., (Ky.), 174; *Union Mut. Ins. Co.* v. *Wilkinson*, 13 Wall. 222; *Hartford Fire Ins. Co.* v. *Farrish*, 73 Ill. 166. And, as a general rule, where the assured has no knowledge of any limitations on the authority of the agent with whom he deals, the extent of the authority of such agent is a question of fact for the jury: *Hough* v. *City Fire Ins. Co.*, 29 Conn. 10; *Hardwick* v. *Ins. Co.*, 20 Or. 547, 26 Pac. 840; *Phœnix Ins. Co.* v. *Stocks*, (Ill. App.), 36 N. E. 408. But an agent has no implied or

actual authority in law to issue a policy to himself. This rule is based on the principal that the law will not permit one to serve diverse interests: *Wildberger* v. *Ins. Co.*, (Miss.), 17 So. 282; *Hanover Fire Ins. Co.* v. *Shrader*, (Tex. Civ. App.), 31 S. W. 1100. The authority of a recording agent, where disputed, may be shown by advertising circulars, issued by the company for which he acts, stating that such agent has authority to issue policies, where such circulars are brought to the knowledge of the person dealing with the agent in such capacity: *Frank* v. *Ins. Co.*, 62 N. W. 454.

There is still another class of agents who figure more or less extensively in soliciting insurance and procuring policies. Reference is had to so-called brokers. The extent of the authority of these agents is usually not very difficult of ascertainment, but, to arrive at a correct determination of the nature and scope of their authority, it is always necessary to ascertain for whom they act, whether for the assured or for the company or, possibly, for both. Ordinarily, like a soliciting agent, the broker only binds his company in what he does in delivering the policy and collecting the premium. Within the scope of this authority he may bind his principle by a neglect to collect the premium as directed. So, where a policy is sent to a broker who is instructed to collect and remit the premium, and he delivers the policy, collects the premium, but fails to pay it to the company, the latter will be liable, nevertheless, for a loss, though the policy provides that it shall not be binding until the actual payment of the premium to the assurer: *Universal Fire Ins. Co* v. *Black*, 109 Pa. 535, 1 Atl. 523; *Criswell* v. *Riley*, 5 Ind. App. 496, 32 N. E. 814. And so, the knowledge of a broker who is employed by an agent of a company to procure business, for it is such knowledge of the company as will estop it from asserting a forfeiture of the policy which, though unknown to the company, is known and ascertained by the broker through his negotiations for the insurance: *Mullin* v. *Ins. Co.*, 58 Vt. 113, 4 Atl. 817. The acts and knowledge of such a broker are the acts and knowledge of the company to the same extent that they would be if the insurance had been negotiated through

the agent instead of the broker: *Riley* v. *Ins. Co.*, 110 Pa. 144, 1 Atl. 528. Of course, if the broker be employed by the applicant to get the insurance for him, he will be the agent of the applicant in all his acts in this direction: *White* v. *Ins. Co.*, 120 Mass. 330. If, too, the company entrust the broker with the policy to be delivered by him to the applicant upon the payment of the premium, the broker, to this extent, only, will represent the company. The status of the relation of the broker to the company, or to the applicant, will, when disputed, be usually a question of fact for a jury, and when solved in this respect, the legal effect of the relation will not be difficult. The applicant is bound as to everything the broker does as his agent. On the other hand, it follows necessarily that in all the broker does in behalf of the company, he is its agent, and it will be bound by his acts within the scope of such agency.

In cases of losses insurance companies have agents for the purpose of looking after and settling these. Agents for this purpose are denominated adjusters. Their duties relate solely to matters connected with the insurance contract after the loss occurs. Consequently, no act or declaration of an adjuster in regard to anything that might transpire before the loss could bind his company, because it is not within the real or apparent scope of the authority of such an agent to do any act in reference to the effecting of the insurance. But within the scope of his authority, the adjuster, like any other agent, may bind his principal by his acts and knowledge. And if a company sends its adjuster to settle a loss under a policy, and the adjuster, after looking into the case, notifies the assured that the company will not pay the loss, this will have the effect of putting the assured and insurer at arms' length, and the former may then sue without furnishing proofs of loss, or complying with other like conditions precedent, which will have been waived by the act of the adjusting agent, and, through him, by the company itself: *Parsons* v. *Ins. Co.*, (Mo.), 31 S. W. 117; *Kahn* v. *Ins. Co.*, (Wyo.), 34 Pac. 1059; *East Tex. Fire Ins. Co.* v. *Brown*, 82 Tex. 635, 18 S. W. 713; *Home Fire Ins. Co.* v. *Hammang*, (Neb.), 62 N. W. 883. And such denial of

liability by the adjuster will deprive the company of the benefit of a stipulation in the policy that it may have ninety days within which to pay the loss after the receipt of notice and satisfactory proofs of same, and suit may be begun on the policy at once: *German Ins. Co.* v. *Gibson*, 53 Ark. 495, 14 S. W. 672. The sending of an adjuster to settle a loss of itself vests him with the authority to agree on the amount due the assured by reason of the loss: *Id.*, *Brown* v. *State Ins. Co.*, 74 Iowa, 428, 38 N. W. 135. But where the assured relies on a waiver by an adjuster, the onus is on him to show the authority of such agent: *German Ins. Co.* v. *Davis*, (Neb.), 59 N. W. 698. But where an adjuster has, with proper authority, once adjusted a loss in which the insured was interested, the latter is justified in relying on the authority of such adjuster to settle another loss for the same company, no revocation of authority having been brought home to the assured: *Slater* v. *Ins. Co.* 57 N. W. 422. It has been held that an adjuster who is selected by his principal for his special fitness in the line of duty assigned him, cannot appoint another to act in his stead without the consent of the company, and this is doubtless sound law: *Ruthven* v. *Ins. Co.*, (Iowa), 60 N. W. 663. But see, *contra*, *Swain* v. *Agricultural Ins. Co.*, 37 Minn. 390, 34 N. W. 738. In this last case, too, the adjuster had general authority as such, and it was held that he had authority to appoint others to assist him in his duties and work as such.

There is yet another class of agents with more extended powers than any that have been considered. These are classed as general agents. Some of the courts hold that local recording agents with authority to pass upon risks and issue policies and collect the premium therefor, are general agents, and bind the company by their acts: *Kahn* v. *Ins. Co.*, (Wyo.), 34 Pac. 1059. But these are not the general agents now under discussion, but rather such as have charge over a state or other territory and exercise a general superintending control over inferior agencies and the business of their principals generally within the bounds of the territory to which they are assigned for duty. Generally, it is not difficult to arrive at a correct conclusion as to the scope and extent of powers of such

agents. As the term imports, they have general authority, and, possessing such, and having charge in this capacity over large territory and extensive operations, they are not limited in authority as a soliciting, recording, or other agent is, but have full power and authority to bind their companies by waivers of the terms of the policy and forfeitures in general, and their acts and doings are practically tantamount to that of the company itself: *Wood* v. *Ins. Co.*, 32 N. Y. 619; *Haruthal* v. *Ins. Co.*, 88 N. C. 71; *Mutual Life Ins. Co.* v. *Nichols*, (Tex. Civ. App.), 26 S. W. 998. Of course, it makes no difference if the policy stipulates that no agent can waive its terms and conditions: *Phœnix Ins. Co.* v. *Bowdre*, 67 Miss. 631, 7 So. 596; *Wich* v. *Ins. Co.*, 2 Colo. App. 484, 31 Pac. 389; *State Ins. Co.* v. *Taylor*, 14 Colo. 499, 24 Pac. 332; *Boetcher* v. *Ins. Co.*, 47 Iowa, 253; *Phœnix Ins. Co.* v. *Munger*, (Kan.), 30 Pa. 120; *Carpenter* v. *Ins. Co.*, 135 N. Y. 298, 31 N. E. 1015; *Bergeron* v. *Ins. Co.*, 111 N. C. 45, 15 S. E. 883; *May, Ins.*, Sec. 131, 132; *Bennett* v. *Ins. Co.*, 70 Iowa, 600, 31 N. W. 948; *Follette* v. *Assn.*, 107 N. C. 240, 12 S. E. 370.

The law requires the utmost good faith on the part of both the assured and insurer. Neither will be permitted to perpetrate a wrong or injury on the other or take any unfair advantage. As has been seen, the difficulty usually arises in cases where the authority of an agent is denied on the one hand and maintained on the other. Under the various grades of agency, as we have seen, many difficult questions often confront both the insured and insurer. The effort has been many to render these questions as lucid as possible within the space consumed.

W. C. RODGERS.

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